



**National Defense Committee**

**Continued Problems with  
Military Voter  
Registration, Absentee  
Ballot Applications, and  
Voting**

*Testimony before the Senate Committee on Rules  
and Administration Hearing on Voter  
Registration: Assessing Current Problems*

Bob Carey, Executive Director  
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[www.NationalDefenseCommittee.org](http://www.NationalDefenseCommittee.org)

## Summary

Military personnel do not register to vote, cast their absentee ballots, or execute their Constitutional right to vote at anywhere near the rate as their civilian counterparts. The voting process they are forced to navigate is overly complex, error prone, and subject to substantial mail delays. Because of these inherent problems, only 22% of the military voted in 2006, as compared to 40% of the general population.<sup>1</sup> Similarly, many military voters never receive their absentee ballots, have difficulty navigating the process in time to complete and return the ballot by the varied State-set voting deadlines, and therefore have far lower absentee ballot cast rates than the general population: only 26% of military personnel cast their absentee ballot in 2006 compared to 85% of the general population. This represents 484,000 military personnel who requested absentee ballots in 2006 but did not cast them.

By far the most significant hindrance to military voters successfully casting ballots is time it takes for absentee ballots to be delivered to military voters and returned to local election officials. 23% of military and overseas ballots rejected in 2006 were rejected because they arrived too late.<sup>2</sup> 39% of military and overseas voters stated they did not receive their absentee ballots until the last two weeks of October 2008.<sup>3</sup> A recent report by the Pew Center on the States indicated that slow mail delivery was the single most significant part of the military absentee voting timeline, accounting for 75.6% of that entire process timeline for the State of New York,<sup>4</sup> and 70.5% in Utah.<sup>5</sup>

The absentee balloting system was developed to deliver ballots around the corner to local voters, not around the world to military personnel deployed to remote, inhospitable, and combat zones. To expect the laws of physics regarding the time and distance realities of postal mail delivery to somehow make way for the desire to have mail delivered faster to military personnel is simply ignoring reality. Almost every reform considered to assist military voters and their families is a work-around for this one simple reality: most States send their ballots out too late, and by too slow a method, for most military voters to have a reasonable chance to receive them, vote them, and return them in time. Until those postal mail delivery times are extended, or quicker means of both delivering and returning ballots is implemented, little improvement is likely.

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<sup>1</sup> Defense Manpower Data Center [DMDC], Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010 (Washington, D.C.: May 7, 2007), table 1.

<sup>2</sup> Elections Assistance Commission. See footnote 26.

<sup>3</sup> Claire M. Smith, Susan Dzieduszycka-Suinat, and Marina Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters Fared in the 2008 General Election and What To Do About It* (Arlington, VA: Overseas Vote Foundation, February 2009), Table 14, p. 19.

<sup>4</sup> The Pew Center on the States, *No Time to Vote: Challenges Facing America's Overseas Military Voters – New York Fact Sheet* (Washington, DC: January 2009).

<sup>5</sup> The Pew Center on the States, *No Time to Vote: Challenges Facing America's Overseas Military Voters – Utah Fact Sheet* (Washington, DC: January 2009).

## **Recommendations**

To allow military voters adequate time to navigate the complex and variable registration and absentee ballot application process, National Defense Committee makes the following recommendations:

- Mandate that all absentee ballots sent to military personnel and their dependents be sent by postal mail at least 60 days prior to their due date, and 30 days prior to Election Day (or postmark requirement date), if ballots need to be postmarked or otherwise certified as voted on or prior to Election Day.
- Mandate that all States send absentee ballots to military voters and their dependents by electronic mail, fax, or postal mail delivery, at the voter's choice of delivery method, at least 30 days prior to the ballot due date.
- Mandate that all States accept Federal Post Card Applications by fax, e-mail and postal mail, at the voter's discretion.
- Expand and mandate the acceptance of the Federal Post Card Application for voter registration and absentee ballot application for all State and local elections
- Extend the automatic absentee ballot delivery requirement for two additional general election cycles to all State and local elections as well as for federal elections.
- Mandate a single registration and absentee ballot application deadline (based on the later of the two, given the difficulties Voting Assistance Officers have in properly advising military voters) for all military voters in each State.
- Prohibit notarization or additional witness requirements for military voter Federal Post Card Applications.

## **Introduction**

Mr. Chairman, Senator Bennett, distinguished members of the Senate Rules Committee, thank you for allowing National Defense Committee to testify before this hearing today. Mr. Chairman, I respectfully request that the full text of my testimony appear in the record of this hearing.

National Defense Committee is a grass-roots military-service organization focusing on the individual rights of service members and strengthening the civil-military relationship. The Committee started the Military Absentee Voting project in 2003, and produced what I believe to be the first comprehensive, non-governmental, statistical analysis of military voting patterns in 2005. That study indicated significant problems for military personnel being able to successfully navigate the complex, varied, and user-unfriendly absentee ballot voting process, and gave credence to decades of anecdotal reports of such problems.

I personally became involved in this in 2006 after my mobilization with the US Navy Reserves just prior to the 2004 general election, and my subsequent unplanned extension on active duty just prior to the 2005 New York City elections, where I lived at the time. Being mobilized two weeks before Election Day, I was unable to apply for an absentee ballot, and it was only by my taking leave at my mobilization preparation site, flying at my own expense back to New York City, and voting in person, was I able to guarantee my right to vote. When I was unexpectedly extended on my mobilization three weeks prior to the 2005 New York City election, I again found it too late to request an absentee ballot. Simple changes to the registration and absentee ballot application processes would have allowed me to vote without having to take leave and fly back to New York City, but such necessary, but minor changes, have been very difficult to enact. Therefore, Mr. Chairman and members of this Committee, it is time for Congress to act, and to do so decisively.

## **Nature of the Military Voter**

### Texas and Florida Together Home to Almost 30% of Military and Dependents

Because Texas and Florida share the distinction of having a large concentration of military facilities, and not having a State personal income tax, many military personnel change their home of residence to those two States if and when they are stationed there. These two States, therefore, have almost 29% of the total military population claiming residence in them; 227,234 in Texas<sup>6</sup> and 184,000 in Florida,<sup>7</sup> representing respectively 15.7% and 12.7% of the total military populations. Florida's military resident population is larger than the next two States combined, California and New York, who share only 190,000 military residents between them.<sup>8</sup>

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<sup>6</sup> J. Scott Weidmann to Hope Andrade, September 26, 2008, Letter to Texas, at "Legislative Initiatives" Web page, Federal Voting Assistance Program Web site <http://www.fvap.gov/resources/media/tx09init.pdf>, accessed May 8, 2009.

<sup>7</sup> P. K. Brunelli to Kurt S. Browning, September 8, 2008, Letter to Florida, at "Legislative Initiatives" Web page, Federal Voting Assistance Program Web site, <http://www.fvap.gov/resources/media/fl09init.pdf>, accessed May 8, 2008.

<sup>8</sup> The Federal Voting Assistance Program leadership wrote letters to each State detailing their military, military dependent, and overseas civilian populations. All States' letter can be found at the FVAP website, <http://www.fvap.gov/reference/laws/state-initiatives/index.html>.

Equally significant, the dependents of those service men and women are disproportionately residents of those States, with an estimated 170,500 (or 15.7% of the national total) military dependents claiming residency in Texas,<sup>9</sup> and 139,000 (13.4%) military dependents claiming Florida.<sup>10</sup> And again, Florida's military dependent resident population is also the same size as the next two States' combined (again California and New York).

In fact, the military and military dependent populations are highly concentrated:

- More than 52% of the military and military dependent populations are residents in just seven States: Texas, Florida, California, New York, Illinois, Washington, and Pennsylvania.
- The top 10 States (Texas, Florida, California, New York, Illinois, Washington, Pennsylvania, Michigan, Tennessee, and Ohio) have more than 62% of the total military and military dependent populations as residents of their States.

What this means is that significant improvements in military voting can be accomplished for a substantial portion of military voters with changes in only a few States. This is not to relieve the other States of their responsibility to make the necessary changes to ensure the franchise of military personnel and their families, but it does provide a guide to prioritizing voting reform efforts.

#### Preponderance of Absentee Voting for Military

The form that military personnel use or voter registration, the Federal Post Card Application (FPCA), is mandated by the Uniformed and Overseas Citizen Absentee Voter Act of 1986 (UOCAVA) to be accepted simultaneously as an Absentee Ballot application. For the military voter, the registration and absentee ballot application are essentially one in the same because of the preponderance of absentee voting by military voters. Although about one-third of the military voters that did vote in 2006 did so by voting in person,<sup>11</sup> more than 90% of those who voted in person did so because they were physically located in the United States. For those military personnel located overseas only 1% of that total voted in person (likely while on leave or temporary duty back in the United States). Therefore, for most military personnel, absentee ballots are the overwhelming method of voting.

### **Military Voting Statistics Shows Substantial Disenfranchisement**

Comparing the general voter population and UOCAVA voter population surveys conducted by the Election Assistance Commission (EAC) in 2006 is illuminating. First, EAC is careful to define its definitions of voter participation specifically, so as to be precise in its estimations. Unlike many other voter registration estimates, EAC uses the Citizens of Voting Age Population (CVAP) instead of simply the entire population, or even the entire Voting Age Population (VAP) as other estimates may. Given the large number of non-citizen immigrants in the United States, this is a significant difference: 299,398,484 total U.S. population, approximately 225,664,000

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<sup>9</sup> Weidmann, Letter to Texas.

<sup>10</sup> Brunelli, Letter to Florida.

<sup>11</sup> Seven percentage points of the 22% total active component military personnel that voted, voted in person. *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010 (Washington, D.C.: Defense Manpower Data Center, Human Resources Strategic Assessment Program, May 7, 2007), Table 1, p. 2.

VAP, and about 206,286,000 CVAP for the 2006 elections,<sup>12</sup> an 8.6%, or more than 19.3 million person, difference between VAP and CVAP. This gap between VAP and CVAP, presumably made up of non-citizen immigrants and felons who have lost their franchise, also represents 6.58% of the total U.S. population.

With approximately 31,000 non-citizen immigrants serving on active duty in the U.S. military,<sup>13</sup> the military CVAP for the 2006 election was about 1.325 million men and women.<sup>14</sup> From this population, the EAC 2006 survey found that 992,034 Federal Post Card Applications (FPCAs) were requested from all three UOCAVA populations – domestic military (including dependents), overseas military (including dependents), and overseas civilians.<sup>15</sup> However, only 374,679 of those UOCAVA ballots requested were actually categorized in the data collected and reported by the States to the EAC.<sup>16</sup> Of those that were categorized, 141,317 were from domestically-stationed military voters, 107,449 were from military personnel stationed outside the United States. Overall, 66.5% of the total categorized UOCAVA ballots requested were from military voters.<sup>17</sup> Extrapolating this percentage to the entire UOCAVA ballot request population indicates that approximately 659,000 military and military dependent voters requested absentee ballots under the UOCAVA system.

This 659,000 represents 52.5% of the military CVAP,<sup>18</sup> and is can serve as a rough measure of the absentee ballot request rate for military voters. However, the Defense Manpower Data Center estimated that seven per cent of the total military population voted in-person in the 2006

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<sup>12</sup> U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings* (Washington, D.C.: December 2007), figure 1, p. 3.

<sup>13</sup> Valerie Alvord, “Non-citizens fight and die for adopted country,” *USA Today* (April 8, 2003), [http://www.usatoday.com/news/world/iraq/2003-04-08-noncitizen-usat\\_x.htm](http://www.usatoday.com/news/world/iraq/2003-04-08-noncitizen-usat_x.htm), accessed 10 March 2008

<sup>14</sup> David Chu, *2006 Population Representation in the Military Services* (Washington, D.C.: Office of the Under Secretary of Defense, Personnel and Readiness, February 1, 2008), tables B-22 and B-30, (from [http://www.defenselink.mil/prhome/PopRep\\_FY06/](http://www.defenselink.mil/prhome/PopRep_FY06/) (accesses March 4<sup>th</sup>, 2008)) minus 31,000 non-citizen military service members.

<sup>15</sup> U.S. Election Assistance Commission [EAC], *UOCAVA Survey Report Findings* (Washington, D.C.: September 2007), p. 1.

<sup>16</sup> *Ibid.*, Table 22.

<sup>17</sup> *Ibid.*

<sup>18</sup> At this point, I will give the benefit of the doubt to the States by assuming that all of these absentee ballot requests were from military voters alone. The reality is that under UOCAVA, military dependents have the exact same absentee balloting rights as military personnel themselves. But the EAC data does not differentiate between military and military dependent voters. Given that military dependents make up 42% of the total military voting population under UOCAVA (1.449 million military personnel plus 1.09 million military dependents, from the FVAP data discussed earlier at footnote 6) But since the EAC data is based upon only 62% of the election officials reporting this data in 2006, extrapolating these calculations may not too far off. However, such an extrapolation may actually mask low absentee ballot request rates – and therefore low voter participation and absentee ballot cast rates – for military dependent voters.

election.<sup>19</sup> Assuming an equivalent in-person voter turnout for the military as a percentage of registered voters as reported by the EAC for the general population in 2006 (47.5%<sup>20</sup>), the total military population of registered voters is approximately 859,000 service men and women.<sup>21</sup> That represents a total registration rate for the U.S. military CVAP of 64.86%, substantially below the 83.8% registration rate for the general population.<sup>22</sup>

### **Military Voter Registration and Absentee Ballot Application Process**

The military voter registration process is exceptionally complex, varies in its deadlines from State to State, is tied in with the absentee ballot application process, and is subject to exceptional opportunities for errors. The Committee was kind enough to post the National Defense Committee's testimony before the March Rules Committee hearing on voter registration, where I detailed the voter registration and absentee ballot application process for military personnel and their dependents. I would recommend the Members and other interested parties to the Rules Committee website, or the National Defense Committee website to download that testimony where both those processes, and the considerable problems military and military dependent voters face in navigating the process, are detailed.

One item, however, bear closer scrutiny for this discussion today, that of the earliest registration and absentee ballot applications can be sent in by military and military dependent voters. UOCAVA currently only mandates that absentee ballot applications must be accepted in the calendar year of the election. For example, regardless of any State established start date for accepting voter registration or absentee ballot applications by military and military dependent voters, for the 2008 election, a State must accept a registration and/or absentee ballot application from January 1<sup>st</sup>, 2008 on to that State's deadlines. To take advantage of this, the Department of Defense sets its first Federal Post Card Application (FPCA) distribution deadline at January 15<sup>th</sup>. But the earlier and earlier dates set for Presidential Preference Primaries means that as many as 455,000 military voters, and 350,000 military dependent voters, were not able to participate in eight States' and the District of Columbia's Presidential Preference primaries given the combination of 2007 registration and absentee ballot deadlines, and the lack of a UOCAVA mandate to accept those FPCAs in 2007 and still have them count for the 2008 election.

This included Florida, New York, Virginia, and Michigan. Additionally, four more States, including California, required FPCAs to arrive to the LEOs only a week later, January 22<sup>nd</sup>. All together, these 12 States and the District of Columbia represent about 40% of the total military population, all of whom were effectively unable to participate in the Presidential Preference

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<sup>19</sup> DMDC, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010, table 1, p. 2.

<sup>20</sup> EAC, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings*, p. 12.

<sup>21</sup> 659,703 military personnel requesting UOCAVA ballots plus 199,903 directly registered military voters. The second number was calculated by taking the seven per cent of military population voting in person (7%\*1,356,201 military CVAP = 94,934), and dividing it by the turnout per cent of registered voters amongst the general population (94,934/47.49% = 199,903).

<sup>22</sup> EAC, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings*, p. 12.

Primary elections because of UOCAVA does not mandate that FBCAs be accepted earlier than the calendar year of the election.<sup>23</sup>

### **Military Absentee Ballot Delivery and Return Process**

The most significant factor in the delays for military voters to receive absentee ballots are the delays inherent in military mail delivery. Military mail is transferred from the US Postal System to the Military Postal System Agency at three transfer gateways: New York, Miami, and San Francisco. Once transferred to military control, it is shipped through military logistics channels, and can be placed in a position of competing against military supplies for space. Furthermore, operational, hostile, and remote locations can delay mail delivery further. Again, my March testimony before this Committee highlights some of the problems inherent in military postal mail delivery, and some of the historical performance of that system.

But the most telling data was seen during the 2008 election season, where the Military Postal System Agency urged military voters in Iraq or Afghanistan to have their voted ballots back in the mail 28 days prior to the election, and all other overseas personnel 21 days, implying a 57 day round-trip for military ballots to and from Iraq and Afghanistan, and a 43 day round-trip for all other overseas locations. And that assumes the military or military dependent voter returns the ballot the very next day. It provides very little time for the voter to research candidates, ballot propositions, or any other item on the ballots that may very well be first introduced to the voter when he or she first receives the ballot. Given the limited access by military voters to current news, voter information, and candidate and issue materials, such a short voting time is patently unfair, especially for the down-ticket contests, especially at the State and local level.

These recommended mailing deadlines are very significant. It indicates that even seven years after the start of contingency operations in Afghanistan, and five and a half years after the start of contingency operations in Iraq, the military mail system cannot guarantee anything better than a 56-day roundtrip for ballots. I do not believe this is a condemnation of the military mail system per se, but simply a fact we must accept as to the inherent limitations of such physical delivery systems. When lives and operational missions are on the line, to expect the military commanders to place military mail at the very front of the delivery line – ahead of wounded servicemen and women, ahead of weapons and ammunition, ahead of mission essential supplies – is not reasonable, especially when safe and secure electronic alternatives exist.

But these inherent postal mail delivery delays do take their toll on absentee ballot success rates. In 2008, the Overseas Vote Foundation found that of those participating in its survey, “More than half (52%) of those who tried but could not vote, were unable to because their ballots were late or did not arrive.”<sup>24</sup> Recalling that the Military Postal System Agency recommended getting 2008 ballots back into the mail at least 28 or 21 days before the election (for Afghanistan/Iraq and other overseas locations respectively), that means that ballots would have to have been

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<sup>23</sup> U.S. Department of Defense Federal Voting Assistance Program, *2008 – 2009 Voting Assistance Guide*, (Washington, D.C.: n.d.) at “Voting Assistance Guide” Web page, <http://www.fvap.gov/pubs/vag.html>, accessed March 10, 2008.

<sup>24</sup> Claire M. Smith, Susan Dzieduszycka-Suinat, and Marina Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters Fared in the 2008 General Election and What To Do About It* (Arlington, VA: Overseas Vote Foundation, February 2009), p. 5.

received no later than October 6<sup>th</sup> or 13<sup>th</sup>, respectively to get the ballot back in the mail the day after receipt. But fully 30% of those surveyed by OVF in 2008 did not receive their ballots until after October 15<sup>th</sup> (11% either the week of the Election or after Election Day), and 22% never received their ballots at all. **To summarize, 52% of these surveyed voters either received their ballots too late or never received them at all.**<sup>25</sup>

Unfortunately, such failures were also seen in the 2006 results reported by local election officials to the Election Assistance Commission. In 2006, more than 13% of all military ballots cast were rejected either because they were received after the absentee ballot deadline or because the ballot was returned by the postal systems as undeliverable.<sup>26</sup> By comparison, only 3.1% of absentee ballots were rejected in the general population, for any reason. The mail delivery-related rejection rate for military ballots is more than four times that for the overall rejection rate of general population absentee ballots.

### **The Absentee Ballot Process Doesn't Give Military Time to Vote**

The Pew Center on the States recently issued an exhaustive study on the ability of overseas military voters to navigate the entirety of the absentee ballot voting process, from registration and absentee ballot application, to receiving the absentee ballot, to casting the absentee ballot. Pew's analysis broke down each step in the voting process for time to completion, State deadlines, and minimum mail transit times. It assumed that every stage of the process worked perfectly and according to standard.

Even then, the Pew report found, Alabama, Arkansas, Connecticut, District of Columbia, Georgia, Maine, Massachusetts, Michigan, New Hampshire, New York, Oklahoma, South Dakota, Tennessee, Texas, Utah and Wyoming did *not* providing enough "time to vote" for overseas military voters. Three other states, Minnesota, Pennsylvania, and Vermont were deemed "at risk" with less than 5 days extra time to complete the voting process.

Significantly, the Pew study found a direct linkage between how long the military voter had to receive and return a military ballot, whether or not any stages of the process could be completed by electronic means, and whether or not that State provided enough time to navigate the process for overseas military voters.

For example, because no stage of the New York military voting process can be conducted by electronic means, New York's overseas military voters require 82 days to navigate the absentee

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<sup>25</sup> Ibid., Table 14, p. 19. Table 14 details percentages of when ballots were received, but only amongst those who received ballots. 22% of the survey respondents never received their ballots, so the 30% late receipt figure is calculated by multiplying 39% (28% second half of October receipt, 9% week of the election receipt, 1% Election Day receipt, 1% post-Election Day receipt) by 78% (the percent that received ballots) to get 30.42%. 30% receiving ballots after October 15<sup>th</sup>, plus 22% never receiving ballots equals 52%.

<sup>26</sup> EAC, *UOCAVA Survey Report Findings*. Table 25a states 48,628 ballots were rejected, both military and overseas civilians. Assuming 175,179 military ballots cast, and that 66.4% of all these rejected ballots are military (assumption methodologies explained above), then 18.4% of all military ballots cast are rejected. Table 25b states 23.1% of all rejected UOCAVA ballots are because of late delivery, and 50.4% are because of undeliverable ballots. 73.5% times 18.4% equals 13.5%.

voting process, but are only given 69 days to do so.<sup>27</sup> For Utah, overseas military voters require 88 days to successfully navigate the process, but are only given 70. Other States represented on this Committee also fair poorly.<sup>28</sup>

- Texas: 60 days required, 51 days provided.
- Tennessee: 85 days required, 70 days provided.
- Hawaii: 34 days required, 32 days provided.<sup>29</sup>
- Georgia: 85 days required, 52 days provided.
- Connecticut: 57 days required, 44 days provided.
- Arkansas: 62 days required, 35 days required.

Because of this, Pew concludes that their, “analysis shows that if voters from these [*No Time to Vote*] jurisdictions actually succeeded in voting, they managed to do so despite their states’ policies and practices, not because of them.”<sup>30</sup>

### **Electronic Transmission Is a Viable Option**

The electronic transmission of FPCAs from voter to election official can significantly accelerate the registration and absentee ballot application process for military voters, and should be widely mandated. As the Pew *No Time to Vote* analysis shows, simply allowing for the electronic transmission of blank ballots from election officials to military voters will reduce that step in the process from 30 days to five days.

Furthermore, the National Institute of Standards and Technology (NIST) just reported in December 2008 that although significant security and election integrity risks may exist for the electronic transmission of voted ballots from military and overseas voters back to election officials (besides the fact that such transmission requires the military or overseas voter to give up their right to a secret ballot), those concerns do not exist for the electronic transmission of registration and absentee ballot applications from voters to election officials:

Distribution of blank ballots to the UOCAVA voter can be reliably facilitated and expedited by the use of fax, e-mail, or web transmission. The threats associated with using fax, e-mail, and web transmission can be mitigated through the use of procedural and technical security controls and therefore do not pose significant risks to the integrity of elections.<sup>31</sup>

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<sup>27</sup> The Pew Center on the States, *No Time to Vote: Challenges Facing America’s Overseas Military Voters – New York Fact Sheet* (Washington, DC: January 2009).

<sup>28</sup> Each State’s individual Fact Sheet can be found at [http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact\\_Sheets/NTTV\\_FactSheets.pdf](http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/NTTV_FactSheets.pdf).

<sup>29</sup> If the military voter wanted to protect his or her secret ballot by sending it in by postal mail. Otherwise, faxing the voted ballot in provides enough time, but the voter must relinquish his or her right to a secret ballot as both voter identification and secrecy cannot be accommodated simultaneously with currently used fax transmission systems.

<sup>30</sup> The Pew Center on the States, *No Time to Vote* study, p. 18.

<sup>31</sup> Andrew Regenscheid and Nelson Hastings, *A Threat Analysis on UOCAVA Voting Systems*, NISTIR 7551 (Gaithersburg, MD: National Institute of Standards and Technology, Information Technology Laboratory, December 2008), p. 2. This report also made nearly identical claims as to the security and election integrity protection of

Together, these two reports are powerful indictments of any absentee voting process that does not allow military and overseas voters to receive absentee ballots by e-mail or fax. Continued reliance on postal mail to deliver these forms will perpetuate military voters' disenfranchisement and inability to overcome the myriad of obstacles put before them, obstacles that are entirely avoidable.

However, recent research by the National Defense Committee indicates that fax transmission is not an effective option for military personnel, especially those suffering the greatest disenfranchisement in this process. The fact is that the military, being a much younger subset of the voting population than the general voting population, has a much higher proportion of first time voters, unfamiliar with normal registration and voting procedures, let alone the difficulties of the absentee voting process. National Defense Committee recently analyzed the detailed survey analysis of the Defense Manpower Data Center's 2006 voting survey, and found that while 22% of the military overall voted, only 11% of the junior enlisted personnel voted.<sup>32</sup> Furthermore, only 39% of all junior enlisted personnel had daily access to a fax machine.<sup>33</sup>

Daily access is necessary if States like Hawaii or Rhode Island are going to be able to take advantage of the Pew study's "Time to Vote, But With Concerns" classification where the fax transmission of balloting materials on a next day basis is necessary to achieve that dubious status. Further, such survey results, being for all service members both in garrison in the United States and deployed operationally overseas, is an average that does not adequately describe the dearth of fax machines for the operationally deployed, and especially for the junior enlisted who do not have easy access to headquarters administration departments and operations centers.

## **Conclusion and Recommendations**

Significant improvements in military voting can be achieved with relatively simple changes to military voting procedures, chief amongst them allowing at least 60 days for military absentee ballots to make the round-trip from election official to military voter and back. Second, is to mandate the e-mailing of blank ballots to military voters and their dependents. Historical performance data discussed in my March testimony and today shows conclusively, however, that

- military voters' registration and absentee ballot applications are rejected at a much higher rate than those made by absentee voters in the general population;
- election officials fail to properly notify the majority of rejected military applicants; and
- election officials fail to send timely absentee ballots to military voters who make proper and timely application.
- Military voters do not regularly receive their ballots in enough time to return them by State-set absentee ballot return deadlines.
- The postal mail systems cannot deliver mail back to election officials in time to meet the State-set absentee ballot return deadlines.

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electronically transmitting registration forms and absentee ballot applications from military and overseas voters to election officials.

<sup>32</sup> Defense Manpower Data Center, *December 2006 Status of Forces Survey of Active-Duty Members: Tabulations of Responses*, DMDC Report No. 2007-009, Table 64, p. 184. Paygrades E1 to E4.

<sup>33</sup> Ibid., Table 63, p. 182.

- Military absentee ballots are rejected at almost six times the rate general absentee ballots are rejected (18.4% vs. 3.1%).
- Military voters successfully cast absentee ballots at less than a third of the rate of the general population (26.5% vs. 85.8%).
- Military voters only vote at just over half the rate of general population (22% vs. 39.8%).

To give military voters the opportunity to overcome these barriers that exclusive to them as a military and overseas voters, the National Defense Committee believes the Committee should undertake the following UOCAVA voting reforms:

1. **Mandate that all States send out absentee ballots at least 60 days before the election.** If seven years after the initiation of contingency operations in Afghanistan the best the postal systems can do is 56 days round-trip for military ballots, then no number of work-arounds or criticism of the postal systems will improve that. These timelines are the reality of postal delivery of absentee ballots. For States to provide less than 60 days is to guarantee military voter disenfranchisement.
2. **Mandate that all States transmit absentee ballots by electronic mail and/or fax, at the discretion of the military and military dependent voter.** Given the inherent delays in postal mail delivery to military personnel, the oft changing postal mail addresses for frequently transferring military personnel and families, the poor access most military personnel have to fax machines, the much greater access they have to e-mail accounts, and the constancy of military e-mail addresses, States that do not allow for the e-mailing of blank ballots to military personnel are systematically ensuring their continued disenfranchisement, especially when such States have short absentee ballot return deadlines.
3. **Mandate that all States accept Federal Post Card Applications by fax, e-mail and postal mail, at the voter's discretion, and regardless of e-mail domain.** States have been painfully slow at adopting effective electronic transmission for even FPCA submission by military voters to local election officials – while 43 States allow some form of electronic transmission of FPCAs, only 13 allow it by e-mail. Yet e-mail is the overwhelmingly available method for most military voters: while 77% of military personnel have daily access to either personal or military e-mail accounts,<sup>34</sup> only 43% have daily access to fax machines.<sup>35</sup> For the junior enlisted personnel discussed above, 71% have daily access to e-mail but only 39% have daily access to fax.<sup>36</sup> Given the unequivocal assurances provided in the December 2008 National Institute of Standards and Technology report on the security and integrity of electronic voting support for

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<sup>34</sup> DMDC. 52% report having daily access to their military e-mail (p. 12), and 53% report having daily access to their personal e-mail accounts (p. 14). The probability that they would have access to one or the other is

$$(P[\text{email}_{\text{military}}] + P[\text{email}_{\text{personal}}]) - (P[\text{email}_{\text{military}}] * P[\text{email}_{\text{personal}}])$$

or in this case:

$$(0.53+0.52) - (0.53*0.52) = 1.05 - 0.28 = 77\%$$

<sup>35</sup> Ibid., p. 47.

<sup>36</sup> 46% daily access to DoD e-mail and 47% daily access to non-DoD e-mail equals 71% daily access to one or the other.

military and overseas voters,<sup>37</sup> the only effective alternative is to allow for the e-mail transmission of Federal Post Card Applications at the voter's request.

4. **Expand and mandate the acceptance of the Federal Post Card Application for voter registration and absentee ballot application for all State and local elections.**

UOCAVA only guarantees FPCA acceptance for federal elections. But military service does not exclude military personnel from State and local taxation, jury duty (if reasonably available), or other responsibilities of citizenship. It also implies that military personnel are less responsible or engaged citizens simply because of their military service, an implication that would seem to be countered by the fact that military personnel volunteered for this ultimate civic duty and community service. In potentially requiring military voters to fill out different registration and absentee ballot application forms for State and local elections, simply because they have been involuntarily ordered by federal authority from their place of voting residence, is to deny military equal representation or equal protection under the law. Furthermore, given the poor historical performance of local election officials in protecting military voting rights with a single federal registration and absentee ballot application form, it follows that such failures would be accentuated with a second State or local registration or absentee ballot application form.

5. **Extend the automatic absentee ballot delivery requirement for two additional general election cycles to all State and local elections as well as for federal elections.**

Again, UOCAVA only guarantees that federal ballots will be sent for two additional election cycles after the initial application. Given local election officials poor historical performance with federal ballot requirements, it is unlikely that they would do any better, or even as well, with a separate State or local absentee ballot application and delivery process. Better to mandate all ballots be delivered under the same authority and protect the full spectrum of military voting rights. In these cases, the historically poor performance of local election officials indicates that Congress' traditional reluctance to preempt the States' Constitutional first rights to set voting procedures should be set aside in favor of protecting military voters' rights.

6. **Mandate a single registration and absentee ballot application deadline for all military voters in each State.** A single deadline for both registration and absentee ballot applications is clearly called for given the unique circumstances under which military voters must make application for absentee ballots. Slow mail delivery, the systematic inability of Voting Assistance Officers to properly advise military voters, and the confusing patchwork of State and local deadlines seemingly at odds with the combined capability of the FPCA to serve as both registration and absentee ballot application, make such differing deadlines anachronistic for military voters.

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<sup>37</sup> Regenscheid and Hastings, *A Threat Analysis on UOCAVA Voting Systems*.

7. **Prohibit notarization or additional witness requirements for military voter Federal Post Card Applications and military/military dependents' ballots for federal, State or local elections.** The Federal Voting Assistance Program,<sup>38</sup> the Pew Center on the States,<sup>39</sup> and the Overseas Vote Foundation<sup>40</sup> all call for the elimination of notarization or additional witness requirements for military voters. Besides the difficulty and delay involved in getting a notarization or witness on registration and absentee ballot applications, it does little to prevent fraud, instead simply preventing military voters from participating in the electoral process.

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<sup>38</sup> Federal Voting Assistance Program, "State Legislative Initiatives," at <http://www.fvap.gov/reference/laws/state-initiatives/index.html>, accessed March 10<sup>th</sup>, 2009.

<sup>39</sup> Pew Center on the States, *No Time to Vote*, p. 29.

<sup>40</sup> Smith, Dzieduszycka-Suinat, and Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis*, p. 7.

**Robert H. Carey, Jr.**  
**Senior Fellow, National Defense Committee**

Bob Carey was born and raised in Birmingham, Michigan, outside of Detroit. After graduating from Brother Rice High School, he attended the University of Pennsylvania in Philadelphia. While at Penn, Bob attended the London School of Economics his junior year, and graduating with a Bachelor of Arts degree in Economics in 1985. During his summer breaks, Bob interned at the Office of Management and Budget, the Joint Economic Committee of Congress, and the Export-Import Bank.

Upon his graduation, Bob was commissioned an Ensign in the United States Navy, and embarked on almost 10 years of active duty service. Starting out as a Surface Warfare Officer on the USS COMTE DE GRASSE (DD-974), Bob transferred to Naval Aviation in 1988 as a Naval Flight Officer, and was selected for training as an A-6E "Intruder" Bombardier/Navigator. Assigned to "Bombing Buckeyes" of Attack Squadron EIGHTY-FIVE, the squadron immediately deployed onboard the USS AMERICA to support allied operations against Iraq in DESERT STORM. Bob flew over 35 combat missions to Iraq and Kuwait.

In 1993, Bob was assigned as the Middle East and South Asia Politico-Military Affairs Officer for the Chief of Naval Operations. Bob left active duty in 1995, but continues to serve as a Commander in the US Navy Reserves, having completed three commanding officer tours, and three post-9/11 recalls to active duty in support of Operations NOBLE EAGLE, ENDURING FREEDOM, and IRAQI FREEDOM.

Upon leaving active duty, Bob signed-on to the staff of then-Senator Spence Abraham, progressing from his Defense and Foreign Affairs Legislative Assistant, to Senior Legislative Assistant handling Budget, Tax, and Appropriations matters, and finally as Legislative Director. After Secretary Abraham left the Senate, Bob transferred to the Office of Senator George Allen where he served as Legislative Director.

In January 2002, Bob was reactivated to the US Navy in support of Operation NOBLE EAGLE, serving in the Office of the Chief of Naval Operations as a Reserve Forces Advisor. Upon his deactivation in July 2002, Bob returned to public service as a Deputy Chief Financial Officer in the Department of Energy, handling all budget, management, and climate change issues for the Under Secretary of Energy, Science and Environment.

He was again recalled to active duty in February 2003 to serve as the Chief Staff Officer of the Navy's Seaport Detachment in New York City, responsible for all naval operations in New York harbor, including Fleet Week. Bob again returned to the Department of Energy in November 2003 as a member of the Senior Executive Service, this time to take over as Program Director of the ailing Energy Employees Occupational Illness Compensation Program. Under his leadership, sick-worker claims processing increased 12-fold in six months, exceeding planned production by more than 20%, while simultaneously saving over \$30 million through regulatory reforms.

In July 2004, Bob established Empire-Capitol Strategies, a strategic planning and policy development consulting service, provided consulting services to Pfizer, Inc.'s Science and Medical Advocacy unit, the Secretary of Energy, two Senatorial campaigns, and the US Department of Interior's Minerals Management Service. The firm's development was interrupted for Bob's third recall to active duty in October 2004, this time as Director of the Coalition Operations Center for US Naval Forces, Central Command in the Persian Gulf, and as Vice Admiral Nichol's Executive Assistant.

Bob returned to New York and Empire-Capitol Strategies in November 2005, when he was also named a Senior Fellow with the National Defense Committee, conducting in-depth research on current military and foreign affairs policy and homeland security/counter-terrorism issues. In 2007, Bob returned to active duty to assist in establishing a new Navy unit at the Naval War College tasked with teaching joint and multinational operational procedures to the US Navy Fleet staffs around the world.

Throughout his military duty, Bob has been awarded the Meritorious Service Medal, four Air Medals (two with Combat "V" and two Strike/Flight), five Navy Commendation Medals (two with Combat "V"), the Navy Achievement Medal, as well as unit awards, campaign and service ribbons. As a civilian in the US Department of

Energy, Bob was awarded the Department's Special Act Service Award twice, the only member of the Secretary's immediate staff so awarded.

He resides in Newport with his wife Anne and sons Kitts and Ridge.